

August 28, 2005

Supreme Court Clerk
C/O MSC_clerk@courts.mi.gov

ADM File No. 2004-42

Dear Mr. Clerk:

MDJA would like to comment upon the proposed changes to 8.103, 8.107, 8.110 and 9.205.

The original purpose for the establishment of the guidelines set forth in Administrative Order 2003-7, as stated by the Caseflow Management Coordinating Committee, was to establish an aspirational goal for excellence. The report of that committee expressly states that the guidelines should not be used as a punitive device or the basis of disciplinary proceedings. The time spans originally recommended were shortened by AO 2003-7. The current proposal appears to be a substantial change in philosophy and policy. Instead of aspirational goals, the time lines have become mandatory. They are being incorporated into a court rule and are to be enforced by disciplinary action of the JTC. We are concerned that this philosophic change may tend to elevate bureaucratic efficiency over the fair and efficient administration of justice. This may cause judges to allow legitimate concern over these standards and the possible investigation by the JTC to interfere with their exercise of discretion in the interest of justice.

In discussing the proposed changes, the first question that was asked was the following: "Why are these changes being proposed?" In working with our court administrators and our regional directors, we have not been apprised of a statewide problem that needs to be addressed in this manner. Do the reports filed with the SCAO show that cases across the state are not being resolved in a timely fashion, that justice is being denied because of the delay in concluding these cases? How many "problem" courts are there? If this is a problem in a few courts, why is it necessary to change the requirements for reporting the status of cases in all courts in the state and dramatically increase the penalties for not meeting the "standards"?

Secondly, we ask the following: Why are the goals, or guidelines, changed to "standards"? As stated above, Administrative Order 2003-7 is very clear that the time guidelines are goals and the SCAO will assist courts in reaching these goals.

We are very concerned with the impact these proposed changes would have on the functioning and independence of the court. One could argue that the only change resulting from these proposed changes is adjusting the time requirements to mirror those in AO 2003-7. We believe these proposed changes would have a much greater impact than just changing the reporting requirements. These changes establish clear penalties for failing to meet the standards, including a directive that the SCAO "shall" file a request for investigation with the JTC against any judge who "consistently" does not meet these "standards". The existing rule, 8.103(3), gives the SCAO ample power to investigate delays in meeting the guidelines and, under 8.110(4), the power to initiate whatever corrective actions is necessary under the Supreme Court's direction. How is

“consistently” to be defined? This is a purely subjective standard. What is “consistent” to one regional director may be acceptable to another.

We respectfully urge the Court not to adopt these proposed changes. Thank you for considering our position.

Respectfully submitted

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Michigan District Judges Association